



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 5585-99

6 December 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 30 January 1979 for four years at age 18. The record reflects that you were advanced to LCPL (E-3) but were not recommended for CPL (E-4) in June 1980 because of marginal performance. You served without incident for nearly 18 months, but during the five month period June to November 1980 you received two nonjudicial punishments (NJP) for two instances of disobedience and failure to obey a lawful written order.

On 6 January 1981 you submitted a request for discharge under other than honorable conditions for the good of the service to escape trial by court-martial for failure to go to your appointed place of duty on 100 separate occasions from March to November 1980 and communicating a threat. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You admitted that you were guilty of the offenses and did not desire to

contest the allegations at a trial. On 22 January 1981 a staff judge advocate reviewed the request and found it to be sufficient in law and fact. Thereafter, the discharge authority approved the request and directed discharge under other than honorable conditions.

On 19 February 1981 you received a third NJP for five periods of UA totalling about nine days, two instances of disrespect, and wearing sneakers with a utility uniform. Punishment imposed consisted of a reduction in rank to PVT (E-1). You were discharged under other than honorable conditions on 27 February 1981.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, deprived family background, good post-service conduct, regret for your actions that led to your discharge, and the fact that it has been more than 18 years since you were discharged. The Board noted your contentions to the effect that after you made LCPL you started hanging out with the wrong crowd and using drugs. You also state that you did not understand the conditions of your discharge but your lawyer said that it would be just like an honorable discharge. You claim that since discharge, you have been commended for bravery by the city of New York for apprehending two robbery suspects and have been a law enforcement officer since that time. The Board concluded that the foregoing factors and claims were insufficient to warrant recharacterization of your discharge given your record of three NJPs and the fact that you accepted discharge rather than face trial by court-martial for multiple offenses. Your contentions and assertions are neither supported by the evidence of record nor by any evidence submitted in support of your application. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. The Board thus concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director